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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,148	09/09/2003	Hideo Kato	15682-003001	,5423
26211 7590 08/23/2007 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER MARTIN, ANGELA J	
			ART UNIT 1745	PAPER NUMBER
			MAIL DATE 08/23/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/658,148	KATO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Angela J. Martin	1745	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office Action is responsive to the Amendment filed on June 14, 2007. The Applicant has amended claim 1. Examiner has provided an updated Form PTO-892 listing the Hayashi et al., reference, which was inadvertently not listed in the previous Office Action. However, the rejection is made final for the following reasons of record.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al., U.S. Pat. No. 5,302,471, in view of Hayashi et al., U.S. Pat. Application Pub. 2002/0146610 A1.

Ito et al., teach a control apparatus for a fuel cell stack comprising:  
a fuel cell stack having a stacked body formed by stacking fuel cell units together (col. 4, lines 58-68 and col. 1, lines 1-2) and a pair of end plates sandwiching the stacked body therebetween (col. 5, lines 30-35); electrical heaters disposed near the ends of the stacked body or the end plates, respectively (col. 7, lines 4-16); and a control unit which controls the power generation operation in the fuel cell stack (col. 5, lines 1-2), and

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which is operatively connected to the electrical heaters, wherein the control unit is adapted to operate the electrical heaters (col. 6, lines 32-39). A control apparatus for a fuel cell stack according to claim 1, wherein each of the electrical heaters is disposed between each of the end plates and one of the fuel cell units disposed at each end of the fuel cell stack (col. 7, lines 4-16). A control apparatus for a fuel cell stack according to claim 1, wherein the fuel cell stack further includes a pair of terminal plates each of which is disposed between each of the end plate and one of the fuel cell units disposed at each end of the fuel cell stack, and wherein each of the electrical heaters is embedded in each of the terminal plates (col. 7, lines 4-16). A control apparatus for a fuel cell stack according to claim 1, wherein each of the electrical heaters is embedded in each of the end plates (col. 7, lines 4-16). A control apparatus for a fuel cell stack according to claim 1, wherein the control unit is adapted to execute the power generation operation in the fuel cell stack in order to supply electrical energy to the electrical heaters (col. 6, lines 32-39). A control apparatus for a fuel cell stack according to claim 1, further comprising temperature sensors for measuring temperature of the fuel cell units, wherein the control unit is adapted to control the electrical heaters depending on the temperature of the fuel cell units measured by the temperature sensors (col. 4, lines 58-68). A control apparatus for a fuel cell stack according to claim 11, wherein one of the temperature sensors is attached to one of the fuel cell units disposed in the middle of the fuel cell stack (col. 4, lines 58-68 and col. 5, lines 1-2). A control apparatus for a fuel cell stack according to claim 12, wherein the control unit is adapted to control the electrical heaters depending on the difference between the

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temperature of at least one of the fuel cell units disposed in the middle of the fuel cell stack and the temperature of at least one of the fuel cell units disposed at the ends of the fuel cell stack (Fig. 7). A control apparatus for a fuel cell stack according to claim 12, wherein the electrical heaters are adapted to heat the fuel cell stack (claim 7).

Hayashi et al., teach a control apparatus comprising a water purging device for purging water which is generated during a power generation operation in the fuel cell stack, and which is held in the fuel cell units (0187). A control apparatus for a fuel cell stack according to claim 1, wherein the water purging device comprises: a purging valve which is connected to the other end of the fuel cell stack for regulating flow of water purged from the fuel cell units, and which is operatively connected to the control unit (0187). A control apparatus for a fuel cell stack according to claim 1, wherein the control unit is adapted to operate the electrical heaters and the water purging device prior to stopping of the power generation operation (0135-0136). A control apparatus for a fuel cell stack according to claim 1, wherein the control unit is adapted to operate the electrical heaters first, and then to operate the water purging device when a predetermined time has passed since the beginning of operation of the electrical heaters (0135-0136). A control apparatus for a fuel cell stack according to claim 1, wherein the fuel cell stack further includes a pair of terminal plates, each of which is disposed between each of the end plate and one of the fuel cell units disposed at each end of the fuel cell stack, and a pair of electrical insulators each of which is disposed between each of the end plates and each of the terminal plates, and wherein each of the electrical heaters is disposed between each of the terminal plates and each of the

electrical insulators (0260).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to insert the teachings of Hayashi et al., into the teachings of Ito et al., because by incorporating a heating device and a purging device, there is provided "a fuel cell which can self-heat in a short time, in which no reaction gas is necessary for combustion, thereby improving the starting performance at low temperatures" (Hayashi, 0010).

### ***Response to Arguments***

3. Applicant's arguments filed 6/14/07 have been fully considered but they are not persuasive. Applicant argues, "the Ito et al. patent and the Hayashi et al. reference, alone or in combination, do not disclose or suggest the subject matter of claim 1. In fact, by disclosing that the heaters are operated only during start-up, these references teach away from the claimed 'control unit'." However, Hayashi et al., teach a stop sequence mode in the sequence of temperature control of the fuel cell system in Fig. 17.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Martin whose telephone number is 571-272-1288. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AJM

  
PATRICK JOSEPH RYAN  
SUPERVISORY PATENT EXAMINER